IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 184 OF 1991

M/s. Asian Paints (I) Ltd. ... Plaintiffs

V/s

M/s. Shakti Engineers ... Defendants

Mr. Ahmed Sayyed i/by Dhru & Co. for the plaintiffs.

Mr. K.G.S. Tripathi for the defendants.

CORAM: P.V. KAKADE, J.

DATED: 20TH SEPT., 2004.

P.C.:

1. The plaintiffs have filed the suit against the defendants for recovery of the amount of Rs.71,713/- alongwith interest at the rate of 21% p.a. on the principal amount of Rs.47,025/- from the date of the suit till actual payment or realization.

2. The plaintiffs had, vide purchase order No.9875 dated 12th March, 1988, purchased from the defendants, 20/40 HP, RPM, TEFC, Mesh/Star connection Sq. Cage Electric induction Motor in IBC Frame 200 L, vertical front mounting type, continuous rated class "B" insultation, IP 55, enclosure High torque, operating on

400/440 Volts, 3 phase, 50 cycles A.C. supply (hereinafter referred as the said motor) for total amount of Rs.47,025/-. The said motor was not working in good condition as also in view of the defendants' failure to repair the said motor within the guaranteed period, the plaintiffs cancelled the said purchase order and called upon the defendants to refund the entire purchase amount of Rs.47,025/-. Since the defendants had not refunded the said amount and hence the plaintiffs have filed the suit seeking to get the amount together with interest at the rate of 21% from 2.6.1988 till filing of the suit and further interest at the same rate thereon.

3. Defendants challenged the suit and filed their written statement inter-alia submitting that the said motor supplied by them was not defective one and the reason for motor immediately getting defective was that the plaintiffs were running the motor in single phase condition. The defendants have further contended that, time and again when the plaintiffs made complaint, the motor was duly repaired and joint inspection was held when motor was smoothly running for which purpose document was produced on record and the motor was delivered to the plaintiffs in sound condition. It is

also submitted that since the stamping required replacement due to plaintiffs' misuse of the motor, the defendants made arrangements to procure material replacements. In the meanwhile the plaintiffs dishonestly abandoned the said motor and asked for the refund of the price and plaintiffs did not collect the motor from the defendants though repeated requests were made. Hence the plaintiffs' claim is sought to be dismissed as it is said to be dishonest and malafide.

4. On the basis of the pleadings, issues were settled. The settled issues and my findings thereon are as under:-

(1) Whether the plaintiffs prove that the suit motor was having any manufacturing defects, faulty workmanship and unsatisfactory performance ?

(2) Whether the defendants prove that suit motor acquired deficiency due to failure of starter, improper electric supply and overheating ?

(3) Whether the plaintiffs prove that suit

motor was not properly repaired and rewound ?

(4) Whether the suit is bad in law for misjoinder of parties ?

(5) Whether the suit is barred by the law of limitation ?

(6) Whether the plaint is properly signed and verified ?

(7) Whether the plaintiffs prove that the transaction was on the basis of purchase order dated 12.3.1988 ?

(8) Whether the plaintiffs prove that transaction was on the basis of quotation dated 2.3.1988 ?

(9) Whether the plaintiffs are entitled for decree ?

(10) If the Issue No.9 is answered in the affirmative, then whether plaintiffs are entitled to further interest at the rate of 21%

p.a. from the date of filing of the suit ?

(11) What order and costs ?

My findings on the above issues are -

Issue No.1 :- Affirmative.
Issue No.2 :- Negative.
Issue No.3 :- Affirmative.
Issue No.4 :- Negative.
Issue No.5 :- Negative.
Issue No.6 :- Affirmative.
Issue No.7 :- Affirmative.
Issue No.8 :- Negative.
Issue No.9 :- Affirmative.
Issue No.10 & 11 :- As per final order below.

5. At the outset, it may be noted that the transaction between the parties in respect of the purchase of the said electric motor is not in dispute and the description of the motor contained in the purchase order Exh.P-3 was delivered to the plaintiffs. The contention of the defendants that the suit contract was not based on purchase order but was based on quotation order dated 2.3.1988 cannot be held, as the document in question has

not comeforth on behalf of the defendants. The plaintiffs have asserted that purchase order was based on the contract. Perusal of the purchase order vide Exh.P-3 and delivery memo cum gate pass Exh.P-4 are the documents which are sufficient to show the nature of the contract between the parties under which the goods were delivered to the plaintiffs and due payment to the defendants. It is also not in dispute that the defendants have issued the purchase order. It is also an admitted position that the said motor was delivered to the plaintiffs on 31.5.1988 and sale price was paid on 2.6.1988. It is also an admitted position that the defendants had taken the said motor back to their workshop for repairs on the complaint made by the plaintiffs and returned the same to the plaintiffs. Further even after the repairs were carried out, the said motor once again started giving trouble to the plaintiffs and plaintiffs returned the said motor for the second time to the defendants. Receipt of the plaintiffs' letter dated 25.1.1999 is also an admitted position as well as the fact that plaintiffs' advocate letter dated 14.2.1999 was received. Further the defendants have admitted the fact of addressing a letter dated 23.2.1990 to the plaintiffs and the fact that the motor has remained in the defendants possession till

this date.

6. Now, the entire dispute revolves around the document of purchase order which shows the guarantee of the goods sold by the defendants and purchased by the plaintiffs vide purchase order dated 12.3.1988 Exh.P-3. The document expressly contends the condition of guarantee, thus -

> "**Guarantee**: You will guarantee the above unit for a period of one year against manufacturing defects, faulty workmanship and for satisfactory performance from the date of supply."

Shri Ghorpade, partner of the defendants examined on their behalf was cross-examined during which course he has admitted that defendants had supplied the motor to the plaintiffs as per the said purchase order. He has further admitted that, it is correct that in warranty condition it is stipulated that motor should run safely for a period of one year from the date of supply. In view fo this position, it must be noted that the said transaction was to be governed by the guarantee condition contained in the said purchase order. It must be noted

that the acts of the defendants signified their acceptance of and acting upon the purchase order by delivering the said motor to the plaintiffs and accepting payment in respect thereof. Moreover, the description of the said motor in the purchase order itself shows that the defendants were aware of the purpose of the said motor i.e. the motor was to be used for high speed mixer and as such was to be mounted on a machine. The plaintiffs, pursuant to the receipt of the said motor, mounted the same upon the machine for the purpose of mixing the paint/dispersion of pigment. It is the case of the plaintiffs that, immediately upon conducting the trial of the said motor, the plaintiffs discovered that the said motor was malfunctioning and it was sent back to the defendants' workshop on 6th June, 1988. The defendants thereafter returned the said motor to the plaintiffs with an assurance that the said motor will work satisfactorily. However, when the said motor was again mounted on the machine, the plaintiffs found that the said motor was not functioning properly and was giving trouble right from the first trial and it was again sent to the defendants for further repairs on 19.9.1988. Mr. Ghorpade, in his cross-examination, has admitted that the said motor was sent back for repairs on 6.6.1988. It must be noted that the defendants have

submitted inspection report vide Exh.D-4. The said inspection report however does not at any place specify that any person on behalf of the plaintiffs had gone to check the test run. The defendants' witness, in his cross-examination, has clearly admitted that he has no proof to show that Mr. Talwalkar who is shown to be a person as a representative of the plaintiffs was an employee of the plaintiffs. Therefore, copy of the inspection report produced on behalf of the defendants would have no much evidentiary value. Moreover, the conclusion of the said report clearly shows that the said motor was run on "no load" condition and admittedly it was not tested with "load" or "on load" condition. The test report further shows that the motor was on test-run for a duration of 15 minutes, which, in my view, would hardly give any idea of satisfactory functioning of the said heavy motor especially when run on "no load" condition.

It is the case of the plaintiffs that motor was sent back to the defendants for the second time for repairs on 19.9.1988 and after repeated demands and reminders, the defendants could not repair the same and it is still lying with them. It may be noted that in the course of the trial, the defendants were given option by the Court

to repair the motor and return the same to the plaintiffs, but such offer was not acceptable to the defendants for the reasons best known to them.

It must also be noted that evidently the defendants wrote letter dated 3.5.1989 Exh.P-7 to the plaintiffs in which it is mentioned that, on examination they found that the motor was run in single phase condition and the stamping have been overheated but it was not disclosed to the plaintiffs as it was not carelessness of the plaintiffs' employees. This aspect, by itself, would show that defendants had noted that the motor was defective when they examined the same. However, they were of the view that it was being run on single phase by the employees of the plaintiffs but still thought it fit not to disclose it to the plaintiffs obviously to protect their employees. This mentioning on the part of the defendants should prove to be fatal even if their contention is to be accepted for a moment that the motor was being run on single phase condition though it is not established at all. Under the circumstances, I have no hesitation to hold that the plaintiffs have proved that the suit motor was having manufacturing defect, faulty workmanship and unsatisfactory performance since the beginning as can be seen from the admitted as well as evident condition on

record.

Once this issue is settled, the remaining issues are answered automatically as the findings on Issue No.1 are self-explanatory for Issue No.2.

7. So far as Issue Nos.3, 4 & 5 are concerned, those are not pressed on behalf of the defendants and there is no reason why they should be dealt with in any manner. The plaint is also seen to be properly signed and verified and hence the findings are recorded accordingly.

8. The plaintiffs have claimed interest at the rate of 21% p.a. on the principal amount, however they have not demonstrated as to how they are entitled to the interest at such a rate or if there was any agreement between the parties to pay the interest at the said rate. As such, I am inclined to grant interst at the rate of 12% p.a. and hence the following order :-

O R D E R

The plaintiffs' suit stands partly decreed.

Defendants shall pay the amount of Rs.47,025/- to the

plaintiffs alongwith interest at the rate of 12% p.a. thereon from 2.6.1988 till filing of the suit and at the same rate from filing of the suit till actual payment or realization.

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